APPENDIX A

Statutes Involved

Securities and Exchange Act § 17(a) (Act of May 27, 1933, c. 38, 48 Stat. 84, as amended, 15 U.S.C. § 77q(a)):

> "*Fraudulent interstate transactions.*
>
> It shall be unlawful for any person in the sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly—
>
> (1) to employ any device, scheme, or artifice to defraud, or
>
> (2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
>
> (3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser."

Act of June 25, 1948, c. 645, 62 Stat. 701, 18 U.S.C. § 371:

> "*Conspiracy to commit offense or to defraud United States.*
>
> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.
>
> If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor."

APPENDIX B

Opinion of the United States District Court for the District of Columbia

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

Crim. No. 785-64

UNITED STATES OF AMERICA, *Plaintiff*,

v.

DARWIN C. BROWN

and

M. THOMAS KENT, *Defendants*.

36 F.R.D. 204

(Nov. 9, 1964)

* * * * * * * * * * *

HOLTZOFF, District Judge.

This is a motion by the defendants to dismiss an indictment on the ground that allegedly the Grand Jury, which returned it, has been illegally summoned and convened.

The defendants rely on Title 11, Section 2306 of the Code of Laws of the District of Columbia. That section is a part of a revision and recodification of the District of Columbia Code, which became law on December 23, 1963. It is substantially a reenactment of Title 11, Sections 1406, 1407 and 1408, which were contained in an earlier code. The prior code provided that whenever the United States Attorney for the District of Columbia shall certify in writing to the Chief Judge of the United States District Court, or in his absence, to the senior associate Judge—(actually, this Court does not have associate judges, as every member of this Court is a United States District Judge)—that the exigencies of the public service require it, the Chief Judge or senior associate judge may in his discretion order an additional grand jury to be summoned.

In 1946 the Federal Rules of Criminal Procedure became law. They constitute a comprehensive procedural code for criminal cases in all United States District Courts. Their adoption was a far reaching reform in the law, and an epoch making event in the history of adjective law in this country. Rule 6(a) provides that the Court shall order one or more grand juries to be summoned at such times as the public interest requires. This provision has been uniformly construed as meaning that any member of the Court may order a grand jury to be summoned. Subsection (g) of the same Rule provides that a grand jury shall serve until discharged by the Court, but that no grand jury may serve more than eighteen months.

The practice in this Court has been for a great many years that when an application is made by the Government for the impaneling of what may be informally known as a special grand jury,—because the word "special" is not a word of art,—it is ordinarily submitted to the judge presiding in Criminal Court Number 1. It must be borne in mind that this Court is a multiple-judge court consisting of fifteen judges, that at all times several of them are assigned to hold criminal courts, and that Criminal Court Number 1 supervises the grand jury. The grand jury that returned the indictment in this case was summoned by the judge presiding in Criminal Court Number 1 at the time, and not by the Chief Judge. It is claimed that since the Chief Judge did not summon it, the grand jury was illegally convened.

In 1963, as heretofore stated, the judicial part of the Code of Laws of the District of Columbia was revised, recodified, and reenacted. Section 11-2306 is substantially a reenactment of the earlier provisions that had been in existence long prior to the promulgation of the Federal Rules of Criminal Procedure. It provides that additional grand juries may be summoned by the Chief Judge or in his absence by the presiding judge. The Congressional Committee Reports concerning the 1963 revision, indicate

clearly that the Congress did not intend to make any changes in the law. Some of the phraseology was simplified and condensed and some of the section numbers were either combined or changed. The revision was largely of a purely textual nature.

[1] It is a well recognized principle of statutory construction, which the Court deems applicable to the case at bar, that insofar as a later law is merely a reenactment of an earlier statute, it will not repeal an intermediate Act that qualifies or limits the prior one. Such an intermediate Act will be deemed to remain in force, and will be construed as qualifying or modifying the new Act in the same manner as it did the earlier law.

This principle was recognized and approved by the United States Court of Appeals for the Fourth Circuit in an opinion written by Judge Parker in George v. City of Asheville, N. C., 80 F.2d 50, 56, 103 A.L.R. 568. Numerous State cases have frequently applied and approved this doctrine. Among them are decisions of the Supreme Court of Pennsylvania In re Ferguson's Estate, 325 P. 34, 189 A. 289, and Petition of Indiana County, 360 Pa. 244, 62 A.2d 3, 5; and a decision of the Supreme Court of Minnesota in State ex rel. Village of Buhl v. Borgen, 231 Minn. 317, 43 N.W.2d 95.

[2, 3] In the instant case, the Federal Rules of Criminal Procedure having changed prior law—and it must be remembered that these Rules have the effect of a statute—they will not be deemed to have been amended by a reenactment of the prior code, even though in a revised form.

This conclusion is supported in part by the fact that actually it is impossible to comply with the directions of the reenacted section, because it refers to "terms" of court. Shortly prior to the effective date of the reenactment, Congress abolished "terms" of Court.

We often speak of the intent of Congress in construing statutes. The words "intent of Congress" constitute an

elusive phrase. In connection with major legislation discussed in full in Committee Reports and debated on the floor of one or both Houses, the resulting measure does embody the actual intent of the Members of the Congress. So, too, as concerns minor measures that have been studied by Committees and the purpose of which is defined in the Committee Reports, it may be said that those few Members who actually worked on the proposals represent the majority of the membership and, therefore, the intent of Congress is a realistic concept and is readily ascertainable. The situation is somewhat different when we deal with a codification or reenactment of a prior code. In such an instance, Members of Congress must rely very largely on the work of the staff, most of which are highly efficient and conscientious. In such revisions errors may creep in, however. The term "intent of Congress" as applied to such an enactment becomes very much attenuated. This is not said with any disrespect or disparagement of the legislative branch of the Government. On the contrary, it would be impossible for the Congress to operate effectively in any different manner.

[4, 5] The Court, therefore, reaches the conclusion that the Federal Rules of Criminal Procedure must prevail over the provisions of the reenacted local code, insofar as they cover the same ground. Under the Federal Rules of Criminal Procedure any judge of a District Court is empowered to summon a grand jury. The law no longer distinguishes, as has already been stated, between regular, additional, or special grand juries. The word "special" is no longer used in any technical sense.

[6] There is another point that must be considered, namely, that the methods of issuing orders for the summoning of a grand jury and similar provisions, are intramural internal regulations for the benefit of the Court and in the interest of efficiency in the transaction of public business. They are not intended as limitations on the authority of the grand jury, and they are not jurisdictional

in any respect. This conclusion has been reached in a number of cases, among them a decision of the Fourth Circuit in Breese v. United States, 203 F. 824.

The opinion of another member of this Court, Judge Youngdahl, who arrived at an opposite result in United States v. Tiernan, has been carefully considered. Naturally, it would be preferable to follow a ruling made by a colleague. Any other course under ordinary circumstances is detrimental to orderly procedure. There are occasions, however, and this is not the first one on which judges of this Court have expressed different views on some important subject. The point presented here, although a mere technicality, is important in the sense that it may affect the validity of a number of indictments. Therefore, with due deference and respect for my brother Youngdahl, I feel impelled to reach a different conclusion.

[7, 8] Accordingly, the Court concludes that any United States District Judge is authorized to order that a grand jury be summoned in his district and that, therefore, the Grand Jury that returned the indictment in this case was legally summoned. The motion to dismiss the indictment is denied.

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

Crim. No. 785-64

UNITED STATES OF AMERICA, *Plaintiff*,

v.

DARWIN CHARLES BROWN, RALPH WHITMORE and M. THOMAS KENT, *Defendants*.

36 F.R.D. 207

(Nov. 6, 1964)

* * * * * * * * * *

Thomas Wadden, Jr., Peter R. Taft, Gary Bellow, and Marshall I. Stewart, Washington, D. C., for defendants.

HOLTZOFF, District Judge.

These are motions by defendants to consolidate Counts 2 to 10 of the indictment with Count 1, and to dismiss Counts 2 to 10 as separate counts.

The indictment charges a series of fraudulent sales of securities in violation of the Securities Act of 1933, 15 U.S.C. § 77q(a). Each count charges the mailing of a different letter in connection with the perpetration of an alleged fraudulent sale. The defendants claim that the Act proscribes only a course of conduct and not individual fraudulent transactions and that, therefore, the separate counts are in effect repetitious.

While cases may be found in support of the proposition that, unlike offenses under the Mail Fraud statute, separate mailings do not constitute separate offenses in connection with violations of the Securities Act, many of them are district court decisions. While this Court has great respect for decisions of other district courts, nevertheless, it must yield to the authority of courts of appeals.

[1] There seems to be a difference of opinion between the Second and Tenth Circuits, the Second Circuit holding that only a course of conduct is proscribed by the statute, thereby constituting a single offense. This was held in United States v. Cashin, 281 F.2d 669. On the other hand, the Tenth Circuit, in Palmer v. United States, 229 F.2d 861, 867, holds the following:

> "It is well settled that each separate use of the mails in the execution of a scheme to defraud constitutes a separate offense. * * * The same rule applies to the use of the mails in a scheme to defraud in the sale of securities."

This Court will follow the Tenth Circuit.

Actually what is before the Court here is a matter of not much more significance than a debate over the proper method of drawing legal documents, because it is inconceivable to the Court that if the defendants are convicted on all of the counts they would receive consecutive sentences. It is reasonable to assume that concurrent sentences would be imposed.

[2] It is conceivable that the Government might be prejudiced if it is not permitted to set out separate counts. The defendants are not prejudiced by the present form of the indictment.

The motions to consolidate the counts are denied.

Opinion of the United States District Court for the District of Columbia

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Criminal No. 785-64

UNITED STATES OF AMERICA

v.

DARWIN CHARLES BROWN
and
M. THOMAS KENT

MEMORANDUM AND ORDER

This case is now before the court on the following post-trial motions of defendant Brown: (1) Motion in arrest of judgment, and (2) Motion for judgment of acquittal notwithstanding the verdict and in the alternative for a new trial. Each of these motions, supported by memorandum, was adopted by defendant Kent. The Government filed a memorandum in opposition to defendants' motions. Subsequent thereto, defendant Kent filed in addition a supplemental motion for judgment of acquittal notwithstanding the verdict and in the alternative for a new trial.

The aforementioned motions followed defendant Brown's conviction of five substantive counts charging him with the sale of stock in interstate commerce by means of untrue statements in violation of the Securities Act of 1933, 15 U.S.C. 77q(a), and one count charging him with conspiracy, 18 U.S.C. 371, and defendant Kent's conviction of four substantive counts charging fraudulent stock sales and one count charging conspiracy.

All of the said post-trial motions were the subject of a full hearing and oral argument.

Defendants' motion in arrest of judgment is based primarily on the contention that this Court was without

jurisdiction of the offenses in that (a) the special grand jury was improperly impaneled and if properly impaneled its term had expired, and (b) the grand jury was without sufficient evidence upon which to return an indictment. The first contention was considered and rejected by another Judge of this Court prior to trial. *United States* v. *Brown,* 36 F.R.D. 204 (D.C.C. 1964). Several other Judges of this Court have similarly held in other cases.

The issue presented is whether an additional grand jury can be summoned by the Judge presiding in Criminal Court No. 1, the Chief Judge not being absent. D.C. Code Title 11, Section 2306. To this court's knowledge, there has been but one contra view expressed and that was in the case of *United States* v. *Wallace & Tiernan, Inc.,* 234 F. Supp. 780 (D.C.C. 1964), appeal docketed, No. 19154, D.C. Cir., Nov. 30, 1964. Counsel for the defendants request that action on this point be reserved pending decision of the *Tiernan* case by the United States Court of Appeals. Inasmuch, however, as this is but one of a number of points involved in the pending motions, the court feels that the interests of all concerned would be best served by determination at this time by the trial court. Defendants' request must therefore be denied.

The defendants next urge that there was insufficient evidence before the grand jury to produce a valid indictment. It is alleged that only one witness appeared in person before the grand jury which returned the indictment in this case, with, perhaps, the transcripts of prior grand jury proceedings. Accepting these contentions, *arguendo,* the motion must be denied. "An indictment returned by a legally constituted and unbiased grand jury, like an information drawn by the prosecutor, if valid on its face, is enough to call for trial of the charge on the merits." *Costello* v. *United States,* 350 U.S. 359, 363 (1956). Accord, *United States* v. *Aviles,* 274 F.2d 179, 190-91 (2d Cir.), cert. denied *sub nom. Genovese* v. *United States,* 362 U.S. 974 (1960). As long as there was some competent evidence

to support the charge issued by the grand jury, the indictment should not be dismissed. *United States* v. *Tane,* 329 F.2d 848 (2d Cir. 1964).

The court deems the remaining contentions of the defendants to be without merit. The motion for arrest of judgment is therefore denied.

In support of their motion for judgment of acquittal notwithstanding the verdict, defendants contend that the court erred in failing to direct a verdict for the defendants. It is urged that reasonable jurymen must necessarily have had reasonable doubts as to the defendants' guilt, since the testimony essential to the Government's case-in-chief was so thoroughly discredited. There was in a number of instances a conflict in the testimony of the witnesses, but there was adequate and competent testimony on which the jury could find a verdict of guilty. This is the function of the jury. The court finds and holds, under the principle enunciated in *Curley* v. *United States,* 81 U.S. App. D.C. 389, cert. denied, 331 U.S. 869 (1947), that the evidence was such that a reasonable man might fairly conclude guilt beyond a reasonable doubt, and that the court was therefore required to deny the motion for judgment of acquittal and submit the case to the jury. The post-trial motion for judgment of acquittal notwithstanding the verdict is therefore denied.

In the alternative, defendants pray for a new trial pursuant to Rule 33. The grounds offered begin with the court's refusal to instruct the jury that if they found two agreements or conspiracies among the defendants, rather than one as alleged, they must return a verdict of not guilty. There was but one conspiracy—namely, to defraud prospective investors in securities. The fact that more than one company's securities were involved did not make for two conspiracies. Moreover, even if there be a variance between the charge and the evidence as to the scope of the conspiracy, such variance will be ignored unless some

substantial rights of the defendants are affected. In *Kotteakos* v. *United States,* 328 U.S. 750 (1946), cited by the defendants, an instruction that there was one conspiracy was held to be prejudicial, as the jury was also instructed that the acts of one conspirator should be imputed to the other members of the conspiracy. Thus only one overt act had to be shown, whereas a separate overt act for each conspiracy would otherwise have been required. In the instant case, however, the evidence showed, and the jury found, overt acts by both defendants as to each of the projects. Both defendants were found guilty of substantive counts involving both projects. Thus, even if it is believed there were two schemes, the argument is to no avail. See *United States* v. *Benjamin,* 328 F.2d 854, 864 (2d Cir.), cert. denied *sub nom. Howard* v. *United States,* 377 U.S. 953 (1964).

It should be noted that the Court in *Kotteakos* did not overrule *Berger* v. *United States,* 295 U.S. 78 (1935), in which an indictment charging four defendants with one conspiracy was held to cover two agreements by three of the four, one conspirator being different in each proved offense. The Court in the *Kotteakos* case said the dangers of transference of guilt inherent in a mass trial did not arise in a trial of three or even five defendants, but did when thirty-six were involved. 328 U.S., at 772-74.

No other prejudice from the alleged variance is suggested, and none occurs to the court.

While in the present case there were two promotions, Inter-American Timber Corporation and Venezuela Mines, Inc., the evidence clearly showed direct or indirect participation by both defendants in material aspects of the scheme or schemes—purpose to defraud prospective purchasers of securities. The same parties participated in both, and the same contacts were approached to invest in both. The two ventures were themselves related, one corporation being organized to exploit timber concessions in

Surinam, and the other being formed to exploit gold and diamond placer mining concessions in Venezuela. Finally, the evidence showed that the two promotions overlapped in period of time. These transactions are thus clearly distinguishable from those in *United States* v. *Russano,* 257 F.2d 712 (2d Cir. 1958), cited by the defendants, wherein there was an interval of several years between the transactions, and only one party was common to both.

Next, in support of their motion for a new trial, defendants contend the court erred in its instructions on aiding and abetting, in that it did not sufficiently emphasize knowing participation in the criminal activity. At the outset it must be pointed out that no objection was made at trial to the language of the court's instructions on aiding and abetting, even though counsel were specifically asked if they had anything they would like to add. (Transcript, p. 3343.) Apart from this, it has been held that "aiding and abetting" are not such technical words as to require definition by the court as a matter of law. See, e.g., *Guon* v. *United States,* 285 F.2d 140, 142 (8th Cir. 1960). Nevertheless, this court did in fact tell the jury, with respect to participation "I stated to you, in connection with aiding and abetting, that a person would have to be participating with knowledge and with criminal intent." (Transcript, p. 3342.)

Defendants rely heavily on *United States* v. *Garguilo,* 310 F.2d 249 (2d Cir. 1962), wherein the "instructions with respect to purposive participation, although correct, were rather abstract." But the decision in that case depended completely on the "exceptional circumstances" there presented. The only evidence implicating the aider and abettor was the fact that he had been seen in the company of the principal. The Court said, "[W]hat the judge said would have been adequate, indeed excellent, in the usual trial." Id., at 254. It is interesting to note too that in the instant case the court charged, ". . . [M]ere physical

presence when the offense is committed is not enough." (Transcript, p. 3339.)

The court's instructions were also perfectly clear that a person could be found guilty of aiding and abetting only if such aiding and abetting contributed to the actual commission of a crime. (Transcript, pp. 3297-8, 3322, 3339, 3342, 3343.) While a crime must have been committed, it is not necessary that the principal be tried and convicted. *Colosacco* v. *United States,* 196 F.2d 165 (10th Cir. 1952).

Nor is it necessary that an aider and abettor be charged as such in order to be found guilty. *Nye & Nissen* v. *United States,* 168 F.2d 846, 855 (9th Cir. 1948), aff'd 336 U.S. 613 (1949). No case to the contrary has been cited and the court knows of none.

Defendants further contend that, for various reasons, they were deprived of a fair trial, thus warranting a new trial. The court finds these grounds to be without substance. Only a few comments are called for. Defendants allege that promises to witness Whitmore were improperly withheld from the jury. The existence of such promises is a mere conclusion or deduction of defense counsel. There is no evidence of any promises anticipatory of this trial. Similarly, there is no evidence that Jencks Act materials were in fact withheld by the Government. These charges would appear to have been finally disposed of by the defendants' declining the proffered testimony of the Assistant United States Attorney, Government representatives, and counsel for Whitmore, that no such promises had been made, and no Jencks material withheld. During the trial the court dealt at substantial length with the matter of Jencks material. Hearings were had without jury. Every avenue of possible discovery of any additional Jencks data was exhausted—to the extent of asking defense counsel if there could be any further suggested action.

The allegation that the Government failed to point out and explain contradictions between testimony of Govern-

ment witnesses at the trial and prior statements made during the investigation of these matters by the Government, is likewise without merit. There is no showing of concealment or absence of good faith, although the matter was fully gone into.

At the time of trial, defense counsel had access to and used many allegedly inconsistent prior statements. It is not the Government's duty to impeach its own witnesses, where it believes the material substance to be correct, and any possible inconsistencies are equally available to defense counsel. *Link* v. *United States*, 230 F.Supp. 971, 972 (E.D. Mo.), appeal dismissed mem., 287 F.2d 566 (8th Cir. 1961).

It is therefore, this 26th day of April, 1965,

ORDERED that the defendants' motion in arrest of judgment and their motion for judgment of acquittal notwithstanding the verdict and in the alternative for a new trial, and defendant Kent's supplemental motion for judgment of acquittal notwithstanding verdict and in the alternative for new trial, be, and the same are hereby, denied.

[Signed] R. B. KEECH
Judge

Judgment of the United States Court of Appeals for the District of Columbia Circuit

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1966

No. 19,460

Criminal 785-64

DARWIN CHARLES BROWN, *Appellant,*

v.

UNITED STATES OF AMERICA, *Appellee.*

[Filed Dec. 22, 1966, Nathan J. Paulson]

APPEAL FROM the United States District Court for the District of Columbia.

Before: Burger, Wright and Tamm, Circuit Judges.

JUDGMENT

THIS CAUSE came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

ON CONSIDERATION WHEREOF It is ordered and adjudged by this Court that the judgment of the District Court appealed from in this cause be, and it is hereby, affirmed.

Per Curiam.

Dated: Dec. 22, 1966

Order of the United States Court of Appeals for the District of Columbia Circuit

Before: Burger, Wright and Tamm, Circuit Judges, in Chambers.

Filed Feb. 15, 1967

ORDER

On consideration of appellant's petition for rehearing, it is

ORDERED by the court that appellant's aforesaid petition is denied.

Per Curiam.

Order of the United States Court of Appeals for the District of Columbia Circuit

Before: Bazelon, Chief Judge; and Fahy, Danaher, Burger, Wright, McGowan, Tamm, Leventhal and Robinson, Circuit Judges, in Chambers.

ORDER

On consideration of appellant's petition for rehearing *en banc*, it is

ORDERED by the court *en banc* that appellant's aforesaid petition is denied.

Per Curiam.

Circuit Judge Leventhal did not participate in the foregoing order.

APPENDIX C

Indictment No. 208-64

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Special July Grand Jury Sworn in on July 2, 1963

Criminal No. 208-'64

THE UNITED STATES OF AMERICA

v.

DARWIN CHARLES BROWN,
RALPH H. WHITMORE

Grand Jury No. Original

Violation: 15 U.S.C. § 77q(a)—Fraudulent Sales of Securities; 18 U.S.C. § 371—Conspiracy.

The Grand Jury charges:

COUNT I

From on or about May 1, 1959 and continuing to on or about December 31, 1960 the defendants Darwin Charles Brown and Ralph H. Whitmore in the District of Columbia and within the jurisdiction of this Court, would and did unlawfully, wilfully and knowingly in the offer and sale of securities, namely, the pre-incorporation subscription agreements and common capital stock of Inter-American Timber Corporation, directly and indirectly, employ a device, scheme and artifice to defraud, obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading and engage in transactions, practices and a course of business which would and did

operate as a fraud and deceit upon purchasers of the above-described securities, being generally that class of persons, hereinafter referred to as "investors", whom the defendants believed could be induced to invest and re-invest in said securities, and for the purpose of inducing investors and prospective investors to invest and re-invest in said securities and to obtain money and property from them, and to deceive and defraud them, and to lull investors into a false sense of security as to the merit and value of their investment, all in the following manner:

1. On or about November 23, 1959 the defendants organized and promoted a joint venture entitled Inter-American Timber Company and on or about April 28, 1960 said defendants incorporated Inter-American Timber Corporation, a body corporate, under the laws of the District of Columbia with an authorized capital structure of 1,100,000 shares of common capital stock (both the joint venture and the corporation are hereinafter referred to as Inter-American) purportedly to "own, operate, exploit and develop timber" concessions purportedly owned by Inter-American.

2. During all of said time the defendants operated and controlled Inter-American, and from on or about April 29, 1960 to on or about June 6, 1960 the defendant Ralph H. Whitmore was the president and a director of Inter-American and the defendant Darwin Charles Brown was the secretary-treasurer, counsel and a director of Inter-American, and during all of said time the defendants singly and in concert with and with the aid and assistance of others would and did dominate, control, aid, abet, counsel and direct the affairs of Inter-American.

3. From on or about June 6, 1960 to on or about September 2, 1960 the defendants caused Inter-American to issue to the defendants 200,000 securities of Inter-American, each receiving 100,000 securities at no cost to the defendants and also would and did issue to M. Thomas Kent, 75,000 secur-

ities of Inter-American and to Joseph W. Harris, 25,000 securities of Inter-American at no cost to them or to the defendants.

4. From on or about December 1, 1959 to on or about September 7, 1960 the defendants offered, and sold approximately 39,500 Inter-American securities to investors for proceeds of approximately $26,950.00.

5. From on or about March 1, 1960 to on or about December 31, 1960 the defendants would and did devise, publish and distribute to investors and prospective investors brochures containing false and fraudulent representations and omitting to state material facts pertaining to Inter-American, well knowing at the time that said representations would be and were false and fraudulent when made, said representations and omissions including but not being limited to those set forth in paragraphs 7 and 8 herein.

6. From on or about April 11, 1960 to on or about December 31, 1960 the defendants would and did devise, publish and distribute to investors and prospective investors copies of a telegram containing false and fraudulent representations and omitting to state material facts pertaining to Surinam Timber Corporation well knowing at the time that said representations would be and were false and fraudulent when made, said representations and omissions including but not being limited to those set forth in paragraphs 7 and 8 herein.

7. To induce the investors and prospective investors to invest and re-invest in securities of Inter-American and to obtain money and property from them, and to deceive and defraud them, and to lull investors into a false sense of security as to the merit and value of their investment, the defendants would and did make false and fraudulent representations to investors and prospective investors well knowing at the time that said representations would be and were false and fraudulent when made, including but not limited to the following:

a) that Inter-American had an asset represented by "Concessions from Government of Surinam (Right to lumber off 125,000 acres of virgin timber)".

b) that Inter-American had an asset represented by standing timber on 125,000 acres of concessions in Surinam which was valued at $9,322,940.00.

c) that Inter-American would register its securities with the Securities and Exchange Commission within various periods of time none of which exceeded 90 days.

d) that the stock of Inter-American would be offered to the public at $5.00 per share.

e) that all moneys invested in pre-incorporation agreements of Inter-American would be placed in an escrow account and would be refunded if Inter-American did not raise sufficient funds to become operative and did not register its securities with the Securities and Exchange Commission.

f) that Surinam Timber Corporation had "ACCEPTED ORDERS FOR LUMBER AND TIMBER FOR ANNUAL DELIVERY IN AMOUNTS EXCEEDING $6,800,000.00 TO BE BACKED BY IRREVOCABLE LETTERS OF CREDIT FROM TWO RESPONSIBLE FIRMS."

g) that Inter-American, Surinam Lumber Company and Surinam Timber Corporation were one and the same entity.

8. To induce the investors and prospective investors to invest and re-invest in securities of Inter-American and to obtain money and property from them, and to deceive and defraud them, and to lull the investors into a false sense of security as to the merit and value of their investment, the defendants would and did conceal and omit to state material facts which the defendants well knew at the time were necessary to be stated in order to make the statements made in the light of the circumstances under which they

were made not misleading, including but not limited to the following:

a) that defendants caused Inter-American to issue 300,000 shares of its common capital stock to the defendants and others at no cost to any of them.

b) that money obtained from the sale of securities of Inter-American was being appropriated by the defendants to their own use and benefit.

9. On or about December 30, 1959 the defendants in the District of Columbia and within the jurisdiction of this court, would and did by the use of the mails in the offer and sale of securities of Inter-American to William J. Troup, Jr. in the manner and means more fully described above, unlawfully, wilfully, and knowingly, directly and indirectly, employ said device, scheme and artifice to defraud and obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading, and engage in transactions, practices and a course of business which would and did operate as a fraud and deceit upon investors in said securities, including said William J. Troup, Jr., said use of the mails being as follows:

the defendants caused William J. Troup, Jr. to place in an authorized depository for mail matter in Coral Gables, Florida an envelope and contents addressed to

Inter-American Timber Company
1632 K Street, N. W.
Washington, D. C.

to be sent and delivered by the United States Post Office Department according to the directions thereon in violation of Title 15, United States Code, Section 77q(a).

COUNT II

1. The Grand Jury re-alleges all of the allegations of Count I of this indictment except those contained in paragraph 9 thereof.

2. On or about January 19, 1960 the defendants would and did in the District of Columbia and within the jurisdiction of this court, and by the use of the mails in the offer and sale of securities of Inter-American to Donald A. Cooke in the manner and means more fully described above, unlawfully, wilfully, and knowingly, directly and indirectly, employ said device, scheme and artifice to defraud and obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading, and engage in transactions, practices and a course of business which would and did operate as a fraud and deceit upon investors in said securities, including said Donald A. Cooke, said use of the mails being as follows: the defendants caused The Riggs National Bank to place in an authorized depository for mail matter in the District of Columbia an envelope and contents addressed to

Merrill, Lynch, Pierce, Fenner & Smith
1628 K Street, N. W.
Washington, D. C.

to be sent and delivered by the United States Post Office Department according to the directions thereon in violation of Title 15, United States Code, Section 77q(a).

COUNT III

1. The Grand Jury re-alleges all of the allegations of Count I of this indictment except those contained in paragraph 9 thereof.

2. On or about January 22, 1960 the defendants in the District of Columbia and within the jurisdiction of this

court, would and did by the use of the mails in the offer and sale of securities of Inter-American to J. W. Suggs in the manner and means more fully described above, unlawfully, wilfully, and knowingly, directly and indirectly, employ said device, scheme and artifice to defraud and obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading, and engage in transactions, practices and a course of business which would and did operate as a fraud and deceit upon investors in said securities, including said J. W. Suggs, said use of the mails being as follows:

the defendants caused J. W. Suggs to place in an authorized depository for mail matter in Perrine, Florida an envelope and contents addressed to

Inter-American Timber Company
1632 K Street, N. W.
Washington, D. C.

to be sent and delivered by the United States Post Office Department according to the directions thereon in violation of Title 15, United States Code, Section 77q(a).

COUNT IV

1. The Grand Judy re-alleges all of the allegations of Count I of this indictment except those contained in paragraph 9 thereof.

2. On or about April 13, 1960 the defendants in the District of Columbia and within the jurisdiction of this court, would and did by the use of the mails in the offer and sale of securities of Inter-American to J. W. Suggs in the manner and means more fully described above, unlawfully, wilfully, and knowingly, directly and indirectly, employ said device, scheme and artifice to defraud and obtain money and property by means of untrue statements of ma-

terial facts and omissions to state material facts necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading, and engage in transactions, practices and a course of business which would and did operate as a fraud and deceit upon investors in said securities, including said J. W. Suggs, said use of the mails being as follows:

the defendants caused J. W. Suggs to place in an authorized depository for mail matter in Perrine, Florida an envelope and contents addressed to

Inter-American Timber Company
1632 K Street, N. W.
Washington, D. C.

to be sent and delivered by the United States Post Office Department acording to the directions thereon in violation of Title 15, United States Code, Section 77q(a).

COUNT V

1. The Grand Jury re-alleges all of the allegations of Count I of this indictment except those contained in paragraph 9 thereof.

2. On or about June 17, 1960 the defendants in the District of Columbia and within the jurisdiction of this court, would and did by the use of the mails in the offer and sale of securities of Inter-American to Edgar W. Pfeiffer in the manner and means more fully described above, unlawfully, wilfully, and knowingly, directly and indirectly, employ said device, scheme and artifice to defraud and obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading, and engage in transactions, practices and a course of business which would and did operate as a fraud and deceit upon investors in said securities, including said

Edgar W. Pfeiffer, said use of the mails being as follows: the defendents did place and cause to be placed in an authorized depository for mail matter in the District of Columbia an envelope and contents addressed to

Mr. Edgar W. Pfeiffer
P. O. Box 128
Pensacola, Fla.

to be sent and delivered by the United States Post Office Department according to the directions thereon in violation of Title 15, United States Code, Section 77q(a).

COUNT VI

1. The Grand Jury re-alleges all of the allegations of Count I of this indictment except those contained in paragraph 9 thereof.

2. On or about June 30, 1960 the defendants in the District of Columbia and within the jurisdiction of this court, would and did by the use of the mails in the offer and sale of securities of Inter-American to Edgar W. Pfeiffer in the manner and means more fully described above, unlawfully, wilfully, and knowingly, directly and indirectly, employ said device, scheme and artifice to defraud and obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statement made in the light of the circumstances under which they were made, not misleading, and engage in transactions, practices and a course of business which would and did operate as a fraud and deceit upon investors in said securities, including said Edgar W. Pfeiffer, said use of the mails being as follows: the defendants did place and cause to be placed in an authorized depository for mail matter in the District of Columbia an envelope and contents addressed to

Mr. Edgar W. Pfeiffer
P. O. Box 128
Pensacola, Fla.

to be sent and delivered by the United States Post Office Department according to the directions thereon in violation of Title 15, United States Code, Section 77q(a).

COUNT VII

1. The Grand Jury re-alleges all of the allegations of Count I of this indictment except those contained in paragraph 9 thereof.

2. On or about July 25, 1960 the defendants in the District of Columbia and within the jurisdiction of this court, would and did by the use of the mails in the offer and sale of securities of Inter-American to Edgar W. Pfeiffer in the manner and means more fully described above, unlawfully, wilfully, and knowingly, directly and indirectly, employ said device, scheme and artifice to defraud and obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading, and engage in transactions, practices and a course of business which would and did operate as a fraud and deceit upon investors in said securities, including said Edgar W. Pfeiffer, said use of the mails being as follows: the defendants caused Edgar W. Pfeiffer to place in an authorized depository for mail matter in Pensacola, Florida an envelope and contents addressed to

Mr. Ralph H. Whitmore,
R. H. Whitmore & Co., Inc.,
606 RCA Building,
1725 "K" Street, N. W.,
Washington 6, D. C.

to be sent and delivered by the United States Post Office Department according to the directions thereon in violation of Title 15, United States Code, Section 77q(a).

COUNT VIII

1. The Grand Jury re-alleges all of the allegations of Count I of this indictment except those contained in paragraph 9 thereof.

2. On or about September 2, 1960 the defendants in the District of Columbia and within the jurisdiction of this court, would and did by the use of the mails in the offer and sale of securities of Inter-American to Edgar W. Pfeiffer in the manner and means more fully described above, unlawfully, wilfully, and knowingly, directly and indirectly, employ said device, scheme and artifice to defraud and obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading, and engage in transactions, practices and a course of business which would and did operate as a fraud and deceit upon investors in said securities, including said Edgar W. Pfeiffer, said use of the mails being as follows: the defendants did place and cause to be placed in an authorized depository for mail matter in the District of Columbia an envelope and contents addressed to

Mr. Edgar W. Pfeiffer
P. O. Box 128
Pensacola, Fla.

to be sent and delivered by the United States Post Office Department according to the directions thereon in violation of Title 15, United States Code, Section 77q(a).

COUNT IX

1. The Grand Jury re-alleges all of the allegations of Count I of this indictment except those contained in paragraph 9 thereof.

2. On or about September 7, 1960 the defendants in the District of Columbia and within the jurisdiction of this

court, would and did by the use of the mails in the offer and sale of securities of Inter-American to Edgar W. Pfeiffer in the manner and means more fully described above, unlawfully, wilfully, and knowingly, directly and indirectly, employ said device, scheme and artifice to defraud and obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading, and engage in transactions, practices and a course of business which would and did operate as a fraud and deceit upon investors in said securities, including said Edgar W. Pfeiffer, said use of the mails being as follows: the defendants caused Edgar W. Pfeiffer to place in an authorized depository for mail matter in Pensacola, Florida an envelope and contents addressed to

Mr. Ralph H. Whitmore,
R. H. Whitmore & Co., Inc.,
606 RCA Building,
1725 "K" Street, N. W.,
Washington 6, D. C.

to be sent and delivered by the United States Post Office Department according to the directions thereon in violation of Title 15, United States Code, Section 77q(a).

COUNT X

From on or about May 1, 1959 and continuing to on or about December 31, 1960, the defendants Darwin Charles Brown and Ralph H. Whitmore in the District of Columbia and within the jurisdiction of this court and at other places to the Grand Jury unknown, would and did unlawfully, wilfully, and knowingly combine, conspire, confederate, and agree together and with each other and with other persons to the Grand Jury unkown, to commit offenses against the United States, namely to violate Title 15, United States Code, Section 77q(a) in the manner and means set forth

in paragraphs 1 through 8 of Counts I through IX, the allegations of which paragraphs are hereby re-alleged and incorporated herein by reference.

In furtherance of the aforesaid unlawful conspiracy, and for the purpose of effecting the objects thereof, the defendants would and did commit, among others, the following overt acts in the District of Columbia and within the jurisdiction of this court:

OVERT ACTS

1. On or about January 5, 1960 the defendant Darwin Charles Brown drew a check on the account of Inter-American at the Security Bank for $2,500.00, payable to the defendant Ralph H. Whitmore.

2. On or about January 11, 1960 defendant Darwin Charles Brown mailed and caused to be mailed a letter addressed to Joseph W. Harris, 6855 S.W. 26th Terrace, Miami, Florida.

3. On or about January 12, 1960 the defendant Darwin Charles Brown drew a check on the account of Inter-American at the Security Bank for $500.00 payable to the defendant Ralph H. Whitmore.

4. On or about January 19, 1960 the defendant Darwin Charles Brown drew a check on the account of Inter-American at the Security Bank for $500.00 payable to the defendant Ralph H. Whitmore.

5. On or about January 21, 1960 the defendant Darwin Charles Brown drew a check on the account of Inter-American at the Security Bank for $750.00 payable to the defendant Ralph H. Whitmore.

6. On or about January 24, 1960 the defendant Darwin Charles Brown drew a check on the account of Inter-American at the Security Bank for $2,500.00 payable to the defendant Ralph H. Whitmore.

7. On or about January 30, 1960 the defendant Darwin Charles Brown drew a check on the account of Inter-American at the Security Bank for $2,500.00 payable to Ginsburg, Leventhal Brown & Morrison.

8. On or about February 9, 1960 the defendant Darwin Charles Brown drew a check on the account of Inter-American at the Security Bank for $750.00 payable to the defendant Darwin Charles Brown.

9. On or about March 7, 1960 the defendants Charles Darwin Brown and Ralph H. Whitmore and others to the Grand Jury unknown met at the Sheraton Carlton Hotel in the District of Columbia.

10. On or about March 18, 1960 the defendant Darwin Charles Brown mailed and caused to be mailed a letter, together with a brochure on Inter-American, addressed to Frank Chambers, 120 Montgomery Street, San Francisco, California.

11. On or about April 21, 1960 the defendant Darwin Charles Brown mailed and caused to be mailed a letter, together with a copy of a telegram, addressed to Ellis E. Patterson, 11919 Lockridge Road, Studio City, California, in violation of Title 18, United States Code, Section 371.

DAVID C. ACHESON
Attorney of the United States in and for the District of Columbia

A TRUE BILL:

Foreman.

Indictment No. 228-64

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Special July Grand Jury Sworn in on July 2, 1963

Criminal No. 228

Grand Jury No. Original

THE UNITED STATES OF AMERICA

v.

DARWIN CHARLES BROWN, RALPH H. WHITMORE,
M. THOMAS KENT

Violation: 15 U.S.C. § 77q(a)—Fraudulent Sales of Securities; 18 U.S.C. § 371—Conspiracy

The Grand Jury charges:

COUNT I

From on or about May 1, 1960 and continuing to on or about May 1, 1961 the defendants Darwin Charles Brown, Ralph H. Whitmore, and M. Thomas Kent, in the District of Columbia and within the jurisdiction of this Court would and did unlawfully, wilfully and knowingly in the offer and sale of securities, namely, the common capital stock of Venezuela Mines, Incorporated, directly and indirectly, employ a device, scheme and artifice to defraud, obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading and engage in transactions, practices and a course of business which would and did operate as a fraud and deceit upon purchasers of the above-described securities,

being generally that class of persons, hereinafter referred to as "investors", whom the defendants believed could be induced to invest and re-invest in said securities, all in the following manners:

1. On or about May 1, 1960 the defendants organized and promoted a joint venture and on or about August 2, 1960 said defendants incorporated Venezuela Mines, Incorporated, a body corporate, under the laws of the District of Columbia with an authorized capital structure of 3,000,000 shares of common stock (both the joint venture and the corporation are hereinafter referred to as Venezuela Mines) purportedly to mine, explore, develop and manage gold and silver and precious stones and other deposits and properties.

2. During all of said time the defendants operated and controlled Venezuela Mines, and from on or about August 2, 1960 to on or about May 1, 1961 the defendant M. Thomas Kent was a director of Venezuela Mines and from on or about December 18, 1960 to on or about May 1, 1961 the defendant Darwin Charles Brown was chairman of the board of directors, a vice-president, and counsel of Venezuela Mines and the defendant M. Thomas Kent was a vice-president of Venezuela Mines, and during all of said time the defendants singly and in concert with and with the aid and assistance of others would and did dominate, control, aid, abet, counsel and direct the affairs of Venezuela Mines.

3. On or about February 14, 1960 the defendants caused Venezuela Mines to issue to the defendants 750,000 shares of common capital stock of Venezuela Mines, each receiving 250,000 shares at no cost to the defendants.

4. From on or about September 1, 1960 to on or about May 1, 1961 the defendants offered, and sold approximately 50,000 shares of Venezuela Mines common capital stock to the public for proceeds of approximately $5,000.00.

5. To induce the investors and prospective investors to invest and re-invest in securities of Venezuela Mines and to obtain money and property from them, and to deceive and to defraud them, and to lull investors into a false sense of security as to the merit and value of their investment, from on or about January 1, 1961 to on or about May 1, 1961 the defendants would and did devise, publish and distribute to investors and prospective investors brochures containing false and fraudulent representations and omitting to state material facts pertaining to Venezuela Mines, well knowing at the time that said representations would be and were false and fraudulent when made, said representations and omissions including but not being limited to those set forth in paragraph 6 herein.

6. To induce the investors and prospective investors to invest and re-invest in the common capital stock of Venezuela Mines and to obtain money and proprety from them, and to deceive and defraud them, and to lull investors into a false sense of security as to the merit and value of their investment, the defendants would and did make false and fraudulent representations to investors and prospective investors well knowing at the time that said representations would be and were false and fraudulent, when made, including but not limited to the following:

a) that Venezuela Mines would obtain valuable mineral leases worth millions of dollars.

b) that Venezuela Mines would register its common capital stock with the Securities and Exchange Commission within a short period of time.

c) that the common capital stock of Venezuela Mines would increase substantially in value in a short period of time.

d) that Venezuela Mines had assets which were valued at $109,865,183.00.

e) that Venezuela Mines had a net worth of $107,365,183.10.

7. On or about February 27, 1961 the defendants in the District of Columbia and within the jurisdiction of this Court, would and did by the use of the mails in the offer and sale of the common capital stock of Venezuela Mines, Incorporated, to Edgar W. Pfeiffer, in the manner and means more fully described above, unlawfully, wilfully, and knowingly, directly and indirectly, employ said device, scheme and artifice to defraud and obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading, and engage in transactions, practices and a course of business which would and did operate as a fraud and deceit upon investors in said securities, including said Edgar W. Pfeiffer, said use of the mails being as follows:

the defendants did place and caused to be placed in an authorized despository for mail matter in the District of Columbia an envelope and contents addressed to

Mr. Edgar W. Pfeiffer
P. O. Box 128
Pensacola, Florida

to be sent and delivered by the United States Post Office Department according to the directions thereon in violation of Title 15, United States Code, Section 77q(a).

COUNT II

From on or about May 1, 1960 and continuing to on or about May 1, 1961 the defendants Darwin Charles Brown, Ralph H. Whitmore and M. Thomas Kent in the District of Columbia and within the jurisdiction of this Court and at other places to the Grand Jury unknown, would and did unlawfully, wilfully, and knowingly combine, conspire, confederate, and agree together and with each other and with other persons to the Grand Jury unknown, to comit offenses

against the United States, namely to violate Title 15, United States Code, Section 77q(a) in the manner and means set forth in paragraphs 1 through 6 of Count I, the allegations of which paragraphs are hereby realleged and incorporated herein by reference.

In furtherance of the aforesaid unlawful conspiracy, and for the purpose of effecting the objects thereof, the defendants would and did commit, among others, the following overt acts in the District of Columbia and within the the jurisdiction of this Court:

Overt Acts

1. On or about June 30, 1960 the defendant Darwin Charles Brown mailed and caused to be mailed a letter addressed to Mr. Robert L. Taube, Venezuela Mines, Inc., Apartado 118, Maracaibo, Venezuela.

2. On or about October 29, 1960 the defendant Ralph H. Whitmore mailed and caused to be mailed a letter addressed to Mr. Edgar W. Pfeiffer, P. O. Box 128, Pensacola, Florida.

3. On or about December 18, 1960 the defendants and others to the Grand Jury unknown met at the Tamanaco Hotel in Caracas, Venezuela.

4. On or about March 14, 1961 the defendant M. Thomas Kent ordered 100 copies of a brochure entitled Venezuela Mines Inc. to be duplicated from Campbell Photo and Printing Service Inc.

5. On or about March 21, 1961 the defendant Darwin Charles Brown mailed and caused to be mailed a letter together with a brochure entitled Venezuela Mines Inc. addressed to Mr. Frank Chambers, Continental Capital Corp., 120 Montgomery Street, San Francisco, California.

6. On or about March 22, 1961 the defendant Darwin Charles Brown mailed and caused to be mailed a letter

together with a brochure entitled Venezuela Mines Inc. addressed to Dr. Donald H. McLaughlin, President, Homestake Mining Corporation, San Francisco, California.

7. On or about March 25, 1961 the defendant Darwin Charles Brown mailed and caused to be mailed a letter together with a brochure entitled Venezuela Mines Inc. addressed to Mr. Weston Bouret, Utah Construction & Mining Co., 550 California Street, San Francisco 4, San Francisco [sic].

In violation of Title 18, United States Code, Section 371.

Attorney of the United States in and for the District of Columbia

A TRUE BILL:

Foreman.

Indictment No. 785-64

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term
Special May Grand Jury Sworn in on May 19, 1964

Criminal No. 785-64

Grand Jury No. Original

THE UNITED STATES OF AMERICA

v.

DARWIN CHARLES BROWN
RALPH H. WHITMORE
M. THOMAS KENT

Violation: 15 U.S.C. § 77q(a)—
Fraudulent Sales of Securities;
18 U.S.C. § 371—Conspiracy.

The Grand Jury charges:

COUNT I

From on or about May 1, 1959 and continuing to on or about May 1, 1961, the defendants Darwin Charles Brown, Ralph H. Witmore and M. Thomas Kent, in the District of Columbia and within the jurisdiction of this Court, would and did unlawfully, wilfully and knowingly in the offer and sale of securities, namely, the pre-incorporation subscription agreements and common stock of Inter-American Timber Corporation, and Venezuela Mines, Incorporated, directly and indirectly, employ a device, scheme and artifice to defraud, obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading and engage in transactions, practices and a course of business which would and did operate as a fraud

and deceit upon purchasers of the above-described securities, being generally that class of persons, hereinafter referred to as "investors", whom the defendants believed could be induced to invest and re-invest in said securities, and for the purpose of inducing investors and prospective investors to invest and re-invest in said securities and to obtain money and property from them, and to deceive and defraud them, and to lull investors into a false sense of security as to the merit and value of their investment, all in the following manner:

1. On or about November 23, 1959 the defendants organized and promoted a joint venture entitled Inter-American Timber Company and on or about April 28, 1960 said defendants incorporated Inter-American Timber Corporation, a body corporate, with an authorized capital structure of 1,100,000 shares of common capital stock (both the joint venture and the corporation are hereinafter referred to as Inter-American) purportedly to "own, operate, exploit and develop timber" concessions purportedly owned by Inter-American and organized and promoted a joint venture entitled Venezuela Mines and on or about August 2, 1960 said defendants incorporated Venezuela Mines, Incorporated, a body corporate, with an authorized capital structure of 3,000,000 shares of common stock (both the joint venture and the corporation are hereinafter referred to as Venezuela Mines) purportedly to mine, explore, develop and manage gold and silver and precious stones and other deposits and properties; both Inter-American and Venezuela Mines were incorporated under the laws of the District of Columbia.

2. During all of said time the defendants operated and controlled Inter-American and Venezuela Mines and during all or part of said time the defendant Darwin Charles Brown was Secretary-Treasurer, Counsel and a Director of Inter-American, and chairman of the board of directors, a Vice-President, and Counsel of Venezuela Mines, the

defendant Ralph H. Whitmore was President and a Director of Inter-American and the defendant M. Thomas Kent was a Director of Inter-American and a Director and a Vice-President of Venezuela Mines, and during all of said time the defendants singly and in concert with and with the aid and assistance of others would and did dominate, control, aid, abet, counsel and direct the affairs of Inter-American and Venezuela Mines.

3. From on or about June 6, 1960, to on or about February 14, 1961, the defendants caused Inter-American and Venezuela Mines to issue to the defendants 275,000 securities of Inter-American and 750,000 securties of Venezuela Mines at no cost to the defendants.

4. From on or about December 1, 1959 to on or about May 1, 1961, the defendants offered, and sold approximately 44,500 securties of Inter-American and Venezuela Mines to investors for proceeds of approximately $31,950.00.

5. From on or about March 1, 1960 to on or about May 1, 1961, the defendants would and did devise, publish and distribute to investors and prospective investors brochures containing false and fraudulent representations and omitting to state material facts pertaining to Inter-American and Venezuela Mines, well knowing at the time that said representations would be and were false and fraudulent when made, said representations and omissions including but not being limited to those set forth in paragraphs 7 and 8 herein.

6. From on or about April 11, 1960 to on or about December 31, 1960, the defendants would and did devise, publish and distribute to investors and prospective investors copies of a telegram containing false and fraudulent representations and omitting to state material facts pertaining to Surinam Timber Corporation well knowing at the time that said representations would be and were false and fraudulent when made, said representations and omissions includ-

ing but not being limited to those set forth in paragraphs 7 and 8 herein.

7. To induce the investors and prospective investors to invest and reinvest in securities of Inter-American and Venezuela Mines and to obtain money and property from them, and to deceive and defraud them, and to lull investors into a false sense of security as to the merit and value of their investment, the defendants would and did make false and fraudulent representations to investors and prospective investors well knowing at the time that said representations would be and were false and fraudulent when made, including but not limited to the following:

a) that Inter-American had an asset represented by "Concessions from Government of Surinam (Right to lumber off 125,000 acres of virgin timber)".

b) that Venezuela Mines would obtain valuable mineral leases worth millions of dollars.

c) that Inter-American had an asset represented by standing timber on 125,000 acres of concessions in Surinam which was valued at $9,322,940.00.

d) that Venezuela Mines had assets which were valued at $109,865,183.00.

e) that all moneys invested in pre-incorporation agreements of Inter-American would be placed in an escrow account and would be refunded if Inter-American did not raise sufficient funds to become operative and did not register its securities with the Securities and Exchange Commission.

f) that Venezuela Mines had a net worth of $107,365,183.10.

g) that Surinam Timber Corporation had "ACCEPTED ORDERS FOR LUMBER AND TIMBER FOR ANNUAL DELIVERY IN AMOUNTS EXCEEDING $6,800,000.00 TO BE

BACKED BY IRREVOCABLE LETTERS OF CREDIT FROM TWO RESPONSIBLE FIRMS."

h) that Inter-American, Surinam Lumber Company and Surinam Timber Corporation were one and the the same entity.

i) that Inter-American would register its securities with the Securities and Exchange Commission within various periods of time none of which exceeded 90 days.

j) that Venezuela Mines would register its common capital stock with the Securities and Exchange Commission within a short period of time.

k) that the stock of Inter-American would be offered to the public at $5.00 per share .

l) that the common capital stock of Venezuela Mines would increase substantially in value in a short period of time.

8. To induce the investors and prospective investors to invest and re-invest in securities of Inter-American and Venezuela Mines and to obtain money and property from them, and to deceive and defraud them, and to lull the investors into a false sense of security as to the merit and value of their investment, the defendants would and did conceal and omit to state material facts which the defendants well knew at the time were necessary to be stated in order to make the statements made in the light of the circumstances under which they were made not misleading, including but not limited to the following:

a) that defendants caused Inter-American to issue 275,000 securities and caused Venezuela Mines to issue 750,000 securities to the defendants at no cost to any of them.

b) that money obtained from the sale of securities of Inter-American and Venezuela Mines was being

appropriated by the defendants to their own use and benefit.

9. On or about December 30, 1959 the defendants in the District of Columbia and within the jurisdiction of this court, would and did by the use of the mails in the offer and sale of securities of Inter-American to William J. Troup, Jr. in the manner and means more fully described above, unlawfully, wilfully, and knowingly, directly and indirectly, employ said device, scheme and artifice to defraud and obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading, and engage in transactions, practices and a course of business which would and did operate as a fraud and deceit upon investors in said securities, including said William J. Troup, Jr., said use of the mails being as follows: the defendants caused William J. Troup, Jr. to place in an authorized depository for mail matter in Coral Gables, Florida an envelope and contents addressed to

Inter-American Timber Company
1632 K Street, N. W.
Washington, D. C.

to be sent and delivered by the United States Post Office Department according to the directions thereon in violation of Title 15, United States Code, Section 77q(a).

COUNT II

1. The Grand Jury re-alleges all of the allegations of Count I of this indictment except those contained in Paragraph 9 thereof.

2. On or about January 19, 1960 the defendants would and did in the District of Columbia and within the jurisdiction of this Court, and by means and instruments of transportation and communication in interstate commerce, to wit

in the District of Columbia, in the offer and sale of securities of Inter-American to Donald A. Cooke in the manner and means more fully described above, unlawfully, wilfully, and knowingly, directly and indirectly, employ said device, scheme and artifice to defraud and obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading, and engage in transactions, practices and a course of business which would and did operate as a fraud and deceit upon investors in said securities, including said Donald A. Cooke, said use of the means and instruments of transportation and communication in inter-state commerce being as follows: on or about January 19, 1960, in the District of Columbia the defendants sold and Donald A. Cooke bought securities of Inter-American in violation of Title 15, United States Code, Section 77q(a).

COUNT III

1. The Grand Jury re-alleges all of the allegations of Count I of this indictment except those contained in paragraph 9 thereof.

2. On or about January 22, 1960 the defendants in the District of Columbia and within the jurisdiction of this court, would and did by the use of the mails in the offer and sales of securities of Inter-American to J. W. Suggs in the manner and means more fully described above, unlawfully, wilfully, and knowingly, directly and indirectly, employ said device, scheme and artifice to defraud and obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading, and engage in transactions, practices and a course of business which would and did operate as a fraud and deceit upon investors in said securities, including said J. W. Suggs, said use of

the mails being as follows: the defendants caused J. W. Suggs to place in an authorized depository for mail matter in Perrine, Florida an envelope and contents addressed to

Inter-American Timber Company
1632 K Street, N. W.
Washington, D. C.

to be sent and delivered by the United States Post Office Department according to the directions thereon in violation of Title 15, United States Code, Section 77q(a).

COUNT IV

1. The Grand Jury re-alleges all of the allegations of Count I of this indictment except those contained in paragraph 9 thereof.

2. On or about April 13, 1960 the defendants in the District of Columbia and within the jurisdiction of this court, would and did by the use of the mails in the offer and sale of securities of Inter-American to J. W. Suggs in the manner and means more fully described above, unlawfully, wilfully, and knowingly, directly and indirectly, employ said device, scheme and artifice to defraud and obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading, and engage in transactions, practices and a course of business which would and did operate as a fraud and deceit upon investors in said securities, including said J. W. Suggs, said use of the mails being as follows: the defendants caused J. W. Suggs to place in an authorized depository for mail matter in Perrine, Florida an envelope and contents addressed to

Inter-American Timber Company
1632 K Street, N. W.
Washington, D. C.

to be sent and delivered by the United States Post Office Department according to the directions thereon in violation of Title 15, United States Code, Section 77q(a).

COUNT V

1. The Grand Jury re-alleges all of the allegations of Count I of this indictment except those contained in paragraph 9 thereof.

2. On or about June 17, 1960 the defendants in the District of Columbia and within the jurisdiction of this court, would and did by the use of the mails in the offer and sale of securities of Inter-American to Edgar W. Pfeiffer in the manner and means more fully described above, unlawfully, wilfully, and knowingly, directly and indirectly, employ said device, scheme and artifice to defraud and obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading, and engage in transactions, practices and a course of business which would and did operate as a fraud and deceit upon investors in said securities, including said Edgar W. Pfeiffer, said use of the mails being as follows: the defendants did place and cause to be placed in an authorized depository for mail matter in the District of Columbia an envelope and contents addressed to

Mr. Edgar W. Pfeiffer
P. O. Box 128
Pensacola, Fla.

to be sent and delivered by the United States Post Office Department according to the directions thereon in violation of Title 15, United States Code Section 77q(a).

COUNT VI

1. The Grand Jury re-alleges all of the allegations of Count I of this indictment except those contained in paragraph 9 thereof.

2. On or about June 30, 1960 the defendants in the District of Columbia and within the jurisdiction of this court, would and did by the use of the mails in the offer and sale of securities of Inter-American to Edgar W. Pfeiffer in the manner and means more fully described above, unlawfully, wilfully, and knowingly, directly and indirectly, employ said device, scheme and artifice to defraud and obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statement made in the light of the circumstances under which they were made, not misleading, and engage in transactions, practices and a course of business which would and did operate as a fraud and deceit upon investors in said securities, including said Edgar W. Pfeiffer, said use of the mails being as follows: the defendants did place and cause to be placed in an authorized depository for mail matter in the District of Columbia an envelope and contents addressed to

Mr. Edgar W. Pfeiffer
P. O. Box 128
Pensacola, Fla.

to be sent and delivered by the United States Post Office Department according to the directions thereon in violation of Title 15, United States Code, Section 77q(a).

COUNT VII

1. The Grand Jury re-alleges all of the allegations of Count I of this indictment except those contained in paragraph 9 thereof.

2. On or about July 25, 1960 the defendants in the District of Columbia and within the jurisdiction of this court,

would and did by the use of the mails in the offer and sale of securities of Inter-American to Edgar W. Pfeiffer in the manner and means more fully described above, unlawfully, wilfully, and knowingly, directly and indirectly, employ said device, scheme and artifice to defraud and obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading, and engage in transactions, practices and a course of business which would and did operate as a fraud and deceit upon investors in said securities, including said Edgar W. Pfeiffer, said use of the mails being as follows: the defendants caused Edgar W. Pfeiffer to place in an authorized depository for mail matter in Pensacola, Florida an envelope and contents addressed to

Mr. Ralph H. Whitmore
R. H. Whitmore & Co., Inc.,
606 RCA Building,
1725 "K" Street, N. W.,
Washington 6, D. C.

to be sent and delivered by the United States Post Office Department according to the directions thereon in violation of Title 15, United States Code, Section 77q(a).

COUNT VIII

1. The Grand Jury re-alleges all of the allegations of Count I of this indictment except those contained in paragraph 9 thereof.

2. On or about September 2, 1960 the defendants in the District of Columbia and within the jurisdiction of this court would and did by the use of the mails in the offer and sale of securities of Inter-American to Edgar W. Pfeiffer in the manner and means more fully described above, unlawfully, wilfully, and knowingly, directly and indirectly, employ said device, scheme and artifice to defraud and

obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading, and engage in transactions, practices and a course of business which would and did operate as a fraud and deceit upon investors in said securities, including said Edgar W. Pfeiffer, said use of the mails being as follows: the defendant did place and cause to be placed in an authorized depository for mail matter in the District of Columbia an envelope and contents addressed to

Mr. Edgar W. Pfeiffer
P. O. Box 128
Pensacola, Fla.

to be sent and delivered by the United States Post Office Department according to the directions thereon in violation of Title 15, United States Code, Section 77q(a).

COUNT IX

1. The Grand Jury re-alleges all of the allegations of Count I of this indictment except those contained in paragraph 9 thereof.

2. On or about September 7, 1960 the defendants in the District of Columbia and within the jurisdiction of this court, would and did by the use of the mails in the offer and sale of securities of Inter-American to Edgar W. Pfeiffer in the manner and means more fully described above, unlawfully, wilfully, and knowingly, directly and indirectly, employ said device, scheme and artifice to defraud and obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading, and engage in transactions, practices and a course of business which would and did operate as a fraud

and deceit upon investors in said securities, including said Edgar W. Pfeiffer, said use of the mails as follows: The defendants caused Edgar W. Pfeiffer to place in an authorized depository for mail matter in Pensacola, Florida an envelope and contents addressed to

Mr. Ralph H. Whitmore
R. H. Whitmore & Co.,Inc.,
606 RCA Building
1725 "K" Street, N. W.,
Washington 6, D. C.

to be sent and delivered by the United States Post Office Department according to the directions thereon in violation of Title 15, United States Code, Section 77q(a).

COUNT X

1. The Grand Jury re-alleges all of the allegations of Count I of this indictment except those contained in paragraph 9 thereof.

2. On or about February 27, 1961 the defendants in the District of Columbia and within the jurisdiction of this Court, would and did by the use of the mails in the offer and sale of the common capital stock of Venezuela Mines, Incorporated, to Edgar W. Pfeiffer, in the manner and means more fully described above, unlawfully, wilfully, and knowingly, directly and indirectly, employ said device, scheme and artifice to defraud and obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading, and engage in transactions, practices and a course of business which would and did operate as a fraud and deceit upon investors in said securities, including said Edgar W. Pfeiffer, said use of the mails being as follows: the defendants did place and caused to be placed in an authorized depository for mail matter in

the District of Columbia an envelope and contents addressed to

Mr. Edgar W. Pfeiffer
P. O. Box 128
Pensacola, Florida

to be sent and delivered by the United States Post Office Department according to the directions thereon in violation of Title 15, United States Code, Section 77q(a).

COUNT XI

From on or about May 1, 1959 and continuing to on or about May 1, 1961 the defendants Darwin Charles Brown, Ralph H. Whitmore and M. Thomas Kent in the District of Columbia and within the jurisdiction of this Court and at other places to the Grand Jury unknown, would and did unlawfully, wilfully, and knowingly combine, conspire, confederate, and agree together and with each other and with other persons to the Grand Jury unknown, to commit offenses against the United States, namely to violate Title 15, United States Code, Section 77q(a) in the manner and means set forth in paragraphs 1 through 8 of Counts I. through X, the allegations of which paragraphs are hereby realleged and incorporated herein by reference.

In furtherance of the aforesaid unlawful conspiracy, and for the purpose of effecting the objects thereof, the defendants would and did commit, among others, the following overt acts in the District of Columbia and within the jurisdiction of this Court:

OVERT ACTS

1. On or about January 5, 1960 the defendant Darwin Charles Brown drew a check on the account of Inter-American at the Security Bank for $2,500.00, payable to the defendant Ralph H. Whitmore.

2. On or about January 11, 1960 defendant Darwin Charles Brown mailed and caused to be mailed a letter

addressed to Joseph W. Harris, 6855 S.W. 26th Terrace, Miami, Florida.

3. On or about January 12, 1960 the defendant Darwin Charles Brown drew a check on the account of Inter-American at the Security Bank for $500.00 payable to the defendant Ralph H. Whitmore.

4. On or about January 19, 1960 the defendant Darwin Charles Brown drew a check on the account of Inter-American at the Security Bank for $500.00 payable to the defendant Relph H. Whitmore.

5. On or about January 21, 1960 the defendant Darwin Charles Brown drew a check on the account of Inter-American at the Security Bank for $750.00 payable to the defendant Ralph H. Whitmore.

6. On or about January 24, 1960 the defendant Darwin Charles Brown drew a check on the account of Inter-American at the Security Bank for $2,500.00 payable to the defendant Ralph H. Whitmore.

7. On or about January 30, 1960 the defendant Darwin Charles Brown drew a check on the account of Inter-American at the Security Bank for $2,500.00 payable to Ginsburg, Leventhal Brown & Morrison.

8. On or about February 9, 1960 the defendant Darwin Charles Brown drew a check on the account of Inter-American at the Security Bank for $750.00 payable to the defendant Darwin Charles Brown.

9. On or about March 7, 1960 the defendants Darwin Charles Brown and Ralph H. Whitmore and others to the Grand Jury unknown met at the Sheraton Carlton Hotel in the District of Columbia.

10. On or about March 18, 1960 the defendant Darwin Charles Brown mailed and caused to be mailed a letter, together with a brochure on Inter-American, addressed

to Frank Chambers, 120 Montgomery Street, San Francisco, California.

11. On or about April 21, 1960 the defendant Darwin Charles Brown mailed and caused to be mailed a letter, together with a copy of a telegram, addressed to Ellis E. Patterson, 11919 Lockridge Road, Studio City, California.

12. On or about June 30, 1960 the defendant Darwin Charles Brown mailed and caused to be mailed a letter addressed to Mr. Robert L. Taube, Venezuela Mines, Inc., Apartado 118, Maracaibo, Venezuela.

13. On or about October 29, 1960 the defendant Ralph H. Whitmore mailed and caused to be mailed a letter addressed to Mr. Edgar W. Pfeiffer, P. O. Box 128, Pensacola, Florida.

14. On or about December 18, 1960 the defendants and others to the Grand Jury unknown met at the Tamanaco Hotel in Caracas, Venezuela.

15. On or about March 21, 1961 the defendant M. Thomas Kent ordered 100 copies of a brochure entitled Venezuela Mines, Inc. to be duplicated from Campbell Photo and Printing Service Inc.

16. On or about March 21, 1961 the defendant Darwin Charles Brown mailed and caused to be mailed a letter together with a brochure entitled Venezuela Mines, Inc. addressed to Mr. Frank Chambers, Continental Capital Corp., 120 Montgomery Street, San Francisco, California.

17. On or about March 22, 1961 the defendant Darwin Charles Brown mailed and caused to be mailed a letter together with a brochure entitled Venezuela Mines, Inc. addressed to Dr. Donald H. McLaughlin, President, Homestake Mining Corporation, San Francisco, California.

18. On or about March 25, 1961 the defendant Darwin Charles Brown mailed and caused to be mailed a letter

together with a brochure entitled Venezuela Mines, Inc. addressed to Mr. Weston Bouret, Utah Construction & Mining Co., 550 California Street, San Francisco, 4, San Francisco (sic).

In violation of Title 18, United States Code, Section 371.

Attorney of the United States in and for the District of Columbia

A TRUE BILL:

Foreman.